IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

REVIEW PETITION ST. NO.26915 OF 2004
IN
WRIT PETITION NO.5011 OF 2001

Vijay Ishwar Shendre. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr.N. V. Bandiwadekar for the Petitioner.
Mr.R. D. Rane, Addl. G.P. for the Respondents.
.....

CORAM : A. P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

November 25, 2004.

P.C.:

The delay in filing the Review Petition has been condoned by an order passed on Civil Application No.2752 of 2004. Learned Counsel appearing on behalf of the Petitioner undertakes to get the Review Petition numbered forthwith.

The Review Petition has been, with the consent of Counsel appearing for the Petitioner and the Learned Addl. G.P. Appearing for the Respondents, taken up for hearing.

Admit.

The Petitioner was working as a Junior Engineer with the Kolhapur Zilla Parishad. A departmental enquiry was held against him which culminated in an order of dismissal from service dated 18th November 1987. The Petitioner filed a departmental appeal in which the Divisional Commissioner, Pune Division, by an order dated 18th March 1989 set aside the order of dismissal from service. The Divisional Commissioner directed that the Petitioner be reinstated in service but, that he shall be brought back to his basic pay from the date of his actual resumption on duty. Aggrieved by the order of the Divisional Commissioner, the Petitioner filed Writ Petition No.5011 of 2001 before this Court. The Petition was disposed of by an order dated 4th July 2003. While disposing of the Petition, this Court observed that the Disciplinary Authority had issued a direction that the Petitioner be brought down to his basic pay but, that the aforesaid order was not conditioned by any period during which it would continue to operate. Such a direction, the Court observed, could not have effect over an indefinite period of time. 14 years had elapsed from the order of the Disciplinary Authority and the grievance of the Petitioner was that until date, he continued to be placed on the

same basic pay. Having regard to the facts and circumstances of the case, the Division Bench directed that the penalty which was imposed on the Petitioner by the Disciplinary Authority of bringing him down to the level of the basic pay shall continue to operate till the date of the institution of the Petition. The Court, however, observed that it is not interfering with the order of the Disciplinary Authority on merits. In the circumstances, the Petition was disposed of with the following directions :

> "7. Consequently, this petition shall stand disposed of in terms of the direction that the penalty imposed by the disciplinary authority upon the petitioner directing that he be brought down to his basic pay shall continue to operate upto the date of the institution of the petition (27th November 2000) after which, the Petitioner would be entitled to such of the benefits which would accrue to him as an incident of and in accordance with the applicable rules of service."

After the order of this Court dated 4th July 2003, an order came to be passed by the Chief Executive Officer of the Zilla

Parishad on 6th May 2004. By clause 5 of the order, the Third Respondent directed that the annual increments paid to the Petitioner from 30th March 1989 to 27th November 2000 shall stand cancelled and the amounts paid to the Petitioner towards annual increments shall be recovered from the Petitioner. Aggrieved by the aforesaid order, the Petitioner instituted a writ petition before this Court, W.P.7766 of 2004 in which on 22nd September 2004, notice was issued for final disposal of the Petition and an ad-interim stay on the order of recovery was passed in terms of prayer clause (c) to the Petition. On 4th October 2004, the Petition was permitted to be withdrawn with liberty to file a Review Petition. In the meantime, there was a direction to the effect that the ad-interim order shall continue for a period of four weeks.

In support of the Review Petition, it has been pleaded that after the Petitioner was reinstated in service on 30th March 1989 in pursuance of the order of the Divisional Commissioner, he earned his annual increments in the normal course at regular interval. At the time of the decision of this Court in Writ Petition No.5011 of 2001, this fact was inadvertently not placed before the Court. Moreover, it has been urged that though the Third

Respondent was aware of the aforesaid fact, no liberty was sought by the Third Respondent to recover the increments which had already been paid to the Petitioner in the normal course. However, on an erroneous reading of the order of this Court, the increments which were paid to the Petitioner between March 1989 and November 2000 are sought to be recovered. Hence, it has been urged that a review or clarification of the order of the Court dated 4th July 2003 is called for.

An affidavit in reply has been filed on behalf of the Third Respondent. We have perused the affidavit in reply and heard Counsel appearing for the parties.

The Petitioner was reinstated in service on 30th March 1989 in pursuance of the order of the Divisional Commissioner in the departmental appeal arising out of disciplinary proceedings that were adopted against the Petitioner. It is not disputed that after his reinstatement, the Petitioner was granted regular increments as an incident of service. Inadvertently, this fact was not drawn to the attention of the Court by the Petitioner, nor for that matter had the Third Respondent sought specific directions from

the Court to effect recovery. Indeed, we have no manner of doubt that the order of the Court did not mean to permit the Third Respondent to recover increments which were granted in the normal course upon the reinstatement of the Petitioner in 1989. The order of the Court cannot be regarded as permitting the Third Respondent to do so.

In the circumstances, we dispose of this Review Petition with the clarification that the directions contained in paragraph 7 of the order of this Court dated 4th July 2003 shall not entitle the Respondents to recover the annual increments which were granted to the Petitioner between 30th March 1989 until 27th November 2000, as is sought to be effected by clause 5 of the order dated 6th may 2004 issued by the Third Respondent.

The Review Petition is accordingly disposed of with this clarification. In the circumstances of the case, there shall be no order as to costs.

....